

Amendments to House Bill No. 154
1st Reading Copy

Requested by Representative Tom Jacobson

For the House Taxation Committee

Prepared by Megan Moore
January 22, 2015 (3:52pm)

1. Title, page 1, line 6.

Following: "LEGISLATURE;"

Insert: "AND"

2. Title, page 1, line 8.

Following: "15-30-2364,"

Insert: "15-30-2365,"

3. Title, page 1, line 9.

Following: "15-30-2381,"

Insert: "15-31-125, 15-31-130, 15-31-131, 15-31-132, 15-31-133,
15-31-134, 15-31-150, 15-31-171,"

4. Title, page 1, line 10.

Following: "15-32-703,"

Insert: "15-50-207,"

5. Page 1, line 21.

Strike: "and"

6. Page 1, line 23.

Following: "15-30-2326"

Insert: ";

(g) the credit for additional license fees paid by
contractors provided for in 15-50-207; and

(h) the credit for new or expanded industry provided for in
15-31-124 through 15-31-127"

7. Page 1, line 28.

Strike: "and"

8. Page 1, line 29.

Following: "15-30-2336"

Insert: "; and

(f) the credit for day-care facilities provided for in 15-
30-2365 and 15-31-133"

9. Page 2, line 4.

Following: "15-30-2320"

Insert: "and 15-31-137"

10. Page 2, line 10.

Following: "15-30-2373"

Insert: "and 15-31-131"

11. Page 2, line 11.

Following: "15-30-2367"

Insert: "and 15-31-132"

12. Page 2, line 13.

Following: "15-30-2358"

Insert: "and 15-31-150"

13. Page 2, line 14.

Following: "15-30-2356"

Insert: "and 15-31-134"

14. Page 2, line 15.

Following: "15-30-2368"

Insert: "and 15-31-130"

15. Page 2, line 16.

Following: "15-30-2381"

Insert: "and 15-31-171"

16. Page 13, line 18.

Following: line 18

Insert: "Section 18. Section 15-30-2365, MCA, is amended to read:

"15-30-2365. **Credit for day-care facilities.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property to be used primarily as a day-care facility. The credit must be computed in accordance with the provisions of 15-31-133.

(2) This tax credit is subject to termination on December 31, 2019, and every 8 years thereafter as provided in [section 11.]

{Internal References to 15-30-2365: None.}"

Renumber: subsequent sections

17. Page 16, line 22.

Following: line 22

Insert: "Section 24. Section 15-31-125, MCA, is amended to read:

"15-31-125. **Determination of tax credit.** (1) A new or expanding manufacturing corporation may receive an income tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as provided in this

section. For the first 3 years of operation of a new corporation or the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201, may be allowed. In determining total wages for an expanding corporation, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to determine eligibility for the credit.

(2) This tax credit is subject to termination on December 31, 2017, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-125:

15-31-124 *x 15-31-127 *x 15-32-405x }"

Insert: "Section 25. Section 15-31-130, MCA, is amended to read:

"15-31-130. Tax credit for health insurance premiums paid -- eligible small employers -- corporations. (1) There is a tax credit, as determined under Title 33, chapter 22, part 20, for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan subject to Title 33, chapter 22, part 20.

(2) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-130: None. }

Insert: "Section 26. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

(2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by the employer during the tax year, but the credit may not exceed \$1,575 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this

chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

(4) An amount paid or incurred during the tax year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, 26 U.S.C. 129(c)(1) or (c)(2).

(5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(7) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). For purposes of Title 15, chapter 30, part 25, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-2131.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may

be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(10) For purposes of the credit allowed under subsection (1) or (3):

(a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C. 129(e), apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(11) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-131:

15-30-2373x 15-30-2373x }"

Insert: "Section 27. Section 15-31-132, MCA, is amended to read:

"15-31-132. Tax credit for providing disability insurance for employees. An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance paid by the employer for the employer's employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours a week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of \$25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to \$25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or the employer's successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability.

(6) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-132:

Insert: "Section 28. Section 15-31-133, MCA, is amended to read:

"15-31-133. Credit for day-care facilities. (1) There is a credit against the taxes otherwise due under this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal to:

(a) the amount of the day-care facility credit determined under subsection (2); and

(b) any day-care facility tax credit carryforwards.

(2) The credit allowed under subsection (1) is the lesser of:

(a) \$2,500, multiplied by the number of dependents that the day-care facility is designed to accommodate at the end of the first tax year for which credit is first claimed;

(b) 15% of the cost of the acquisition, construction, reconstruction, renovation, or other improvement; or

(c) \$50,000.

(3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

(a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated as a day-care facility and with whom the employer contracts to make day-care assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes; or

(b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated by the employer, or a combination of employers, to provide day-care assistance to the employees of the employer under a program or programs, and the program or programs are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes.

(4) To qualify for the credit allowed under subsection (1), the following conditions apply:

(a) The property must be in actual use in Montana as a day-care facility on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(b) Day-care services assisted by the employer must take place on the property on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(c) The person operating the day-care facility must hold a current license or registration certificate under Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1) is claimed.

(d) The day-care facility must accommodate six or more

children.

(e) The day-care facility must be placed in operation before January 1, 2006.

(5) The total amount of the costs upon which the credit allowed under subsection (1) is based and the total amount of the credit must be determined by the employer, subject to rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated, or otherwise improved is first placed in operation as a day-care facility.

(6) The amount paid or incurred by the employer upon which the credit allowed under subsection (1) is based must be excluded from the income of an employee subject to the limitations provided in 26 U.S.C. 129(b).

(7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the first tax year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each succeeding tax year, not to exceed 9 tax years.

(8) Except as provided in subsections (4)(a) and (4)(b), if the tax credit allowed under subsection (1) exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years, except that a carryforward amount is not allowed beyond the period allowed for the credit as provided in subsection (7).

(9) The provisions of this section do not affect the computation of depreciation or basis for a day-care facility. However, if the credit allowed under this section is claimed, the amount of any deduction that is allowed or allowable under this chapter for the amounts paid or incurred, or upon which the credit is based, must be reduced by the dollar amount of the credit allowed.

(10) The department shall require evidence from the taxpayer that the person operating the day-care facility on the date that the taxpayer's tax year ends is licensed or registered to operate the facility. The evidence must accompany the tax return in which any amount of tax credit allowed under this section is claimed. If the evidence is not furnished, the credit is not allowed for the tax year for which the evidence is not furnished. Upon request of the department, the department of public health and human services shall report to the department on whether the day-care facility was operated as a licensed or registered day-care facility on the last day of the tax year of the person claiming the credit.

(11) The employer must meet any other requirements or furnish any information to the department that the department requires under rules adopted by the department to carry out the purposes of this section.

(12) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, or a partnership, the credit must be attributed to shareholders or

partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(13) For purposes of the credit allowed under subsection (1):

(a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(14) This tax credit is subject to termination on December 31, 2019, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-133:

15-30-2365a }

Insert: "Section 29. Section 15-31-134, MCA, is amended to read:

"15-31-134. Empowerment zone new employees -- tax credit.

(1) There is a credit for taxes due under 15-31-121 or 15-31-122 for an employer for each new employee at a business in an empowerment zone created pursuant to Title 7, chapter 21, part 37. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in 7-21-3710.

(2) The amount of the credit for each qualifying employee is:

1st year of employment	\$500
2nd year of employment	\$1,000
3rd year of employment	\$1,500

(3) If the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(5) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11]."

{ Internal References to 15-31-134: None. }

Insert: "Section 30. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, except as provided in subsection (6)(e)(ii) of this section, and

includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) Notwithstanding the exception to the definition of wages in 39-51-201(24)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section.

(8) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11.]

{ Internal References to 15-31-150:

15-30-2358x }"

Insert: "Section 31. Section 15-31-171, MCA, is amended to read:

"15-31-171. Tax credit for providing temporary emergency lodging. (1) There is a credit for taxes otherwise due under this chapter for participation in the temporary emergency lodging program established in 50-51-114.

(2) The tax credit is:

(a) equal to \$30 for each day of lodging provided; and

(b) limited to a maximum of 5 nights' lodging for each individual per calendar year.

(3) The credit may be claimed only for lodging provided in Montana.

(4) If the amount of the credit exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the taxpayer has no tax liability.

(5) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(6) This tax credit is subject to termination on December 31, 2023, and every 8 years thereafter as provided in [section 11.]

{ Internal References to 15-31-171:

50-51-114x 50-51-114x }"

Renumber: subsequent sections

18. Page 26, line 2.

Following: line 2

Insert: "Section 41. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes -- credit for personal property taxes and certain fees. (1) (a) The additional

license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporate income tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(b) The credit allowed under this subsection (1) may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 5 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-321(2) and 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's income tax or corporate income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporate income tax credit.

(3) This tax credit is subject to termination on December 31, 2017, and every 8 years thereafter as provided in [section 11.]

{Internal References to 15-50-207: None.}"

Renumber: subsequent sections

- END -

Explanation - This amendment adds termination dates for corporate income tax credits. Under this amendment, corporate income tax credits for which there is a corresponding individual income tax credit will sunset and be reviewed by the Revenue and Transportation Interim Committee on the same schedule as the individual income tax credit. Other corporate income tax credits where inserted into the schedule based on the date of enactment.